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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN WELLS,)
)
 Appellant-Defendant,)
)
 vs.) No. 71A04-0709-CR-520
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodard Miller, Judge
Cause No. 71D01-0602-FD-00157

JUNE 6, 2008

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant John Wells appeals his conviction of attempted residential entry, a Class D felony. We affirm.

ISSUE

Wells raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support the conviction.

FACTS AND PROCEDURAL HISTORY

At around 2:30 a.m. on February 9, 2006, Julie Musselman was awake with her sick daughter. Musselman saw Wells drive up the driveway and park his car behind her truck. Wells attempted to enter Musselman's truck, then jumped over a temporary fence into her back yard. Musselman heard the back door opening, and she woke Bill Brown, her boyfriend, to tell him about Wells' actions.

Musselman called 911, and she and Brown yelled to Wells to tell him that the police had been called. Both Musselman and Brown recognized Wells as one of the men that had been there a year and a half earlier to install a central air unit. A thermostat still needed to be installed in their home, but Musselman and Brown had not had contact with the company since the installation of the unit. As Musselman was on the phone with the 911 operator, Wells claimed that he was there to install the thermostat.

When the police arrived, Wells got into his car, turned on the lights, began to back out of the driveway, and then as he left the driveway, he accelerated "really fast." (Tr. 29). After being stopped, Wells told Officer Bayne Bennett that he had come over to install the thermostat. However, Officer Bennett could not find the thermostat when

searching Wells' car. Furthermore, he found no heating or air conditioning supplies or tools in Wells' possession. Officer Bennett was unable to contact the company because the phone number provided by Wells for the business had been disconnected.

DISCUSSION AND DECISION

Wells contends that there is insufficient evidence to support his conviction. Specifically, he urges this Court to accept his view of the facts.

When reviewing the sufficiency of evidence to support a conviction, an appellate court considers only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Courts of review must be careful not to impinge on the fact-finder's authority to assess witness credibility and to weigh the evidence. *Id.* We will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).

The State presented sufficient evidence to show that Wells did not have Musselman's or Brown's consent to enter the back yard or to attempt entry into the house. Wells claimed he was there to install the thermostat at two or three o'clock in the morning; however, he didn't have the thermostat or any tools with which to perform the installation. Wells is simply asking this court to reconsider the differing theories of the case and the different explanations for his presence at the home, but this court will not reweigh the evidence or assess the credibility of witnesses as part of our review. *See McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Musselman's and Brown's testimony alone shows that Wells did not have permission to enter the home. *See*

Badelle v. State, 754 N.E.2d 510, 543 (Ind.Ct.App .2001), *trans. denied*. (holding that a single eyewitness's testimony is sufficient to sustain a conviction).

CONCLUSION

Wells has failed to show that a reasonable fact-finder would find the evidence insufficient to support his conviction.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.